

THE REALITY OF JUSTICE DELIVERY SYSTEM AND PUBLIC INTEREST IN INDIA

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ABSTRACT

In India, we have a legal framework that, if judged by the principles of justice and equality, measures up very well. Indeed, its advocacy and leadership position in resolving social problems has earned worldwide recognition, as have its activities such as Public Interest Litigation. Where it falls short, is speed and performance.

However, so far as financial independence or support is concerned, our present system is suffering from serious difficulties. It is these difficulties that are the cause for the clogging of cases in the subordinate courts and in several High Courts. It is true that by means of Alternative Dispute Resolution systems such as Lok Adalats several lakhs of cases have been disposed of in the last more than a decade, but that, in the overall perspective, has not reduced the general congestion in the subordinate courts and the High Courts. Basically, lack of long-range planning and lack of finances have been the main causes for the storage of courts and judicial officers in all parts of the country.ⁱ Unless urgent and remedial steps are taken, based on field studies and empirical evidence, our justice delivery system will continue to stumble along with no hope of speedy justice. We already have highly developed tools built with patient technological expertise under the guidance of the e-committee of the Supreme Court. What we lack is the will to make an effort to find a long-term solution, instead of searching for quick-fix remedies that are partially effective and transitory.ⁱⁱ

We have to design a justice system which serves our society.

JUSTICE DELIVERY SYSTEM

An efficient court system is essential to preserving fairness and upholding the rule of law, and the failure of the system will contribute to a rise in crime and a loss of public confidence in government. India's structured legal system has long struggled with a variety of problems, such as faulty regulatory systems, inadequate services and consistency concerns.

Justice delivery system in India constitutes of:

1. Aggrieved person (plaintiff in civil cases and complainant in criminal cases)
2. Alleged wrongdoer (defendant in civil cases and accused in criminal cases)
3. Police
4. Prosecutors
5. Lawyers
6. Courts (from lower courts to supreme court)

It is the courts which ultimately delivers the justice

Factors responsible for the delay in judicial proceeding are:

1. Poor judge to people ratio
2. Frequent adjournments due to inexplicable reasons
3. Ineffective/ unethical lawyers
4. Under resourced and over burdened system
5. Poor infrastructure
6. Delay on part of investigative agencies
7. Incompetent judges

Administration of justice is the most important and essential function of state. It is the power exercised by state through judiciary to enforce right and punish wrong. The judicial process exercised by state consists of:

1. Right claimed or wrong complained by one party against another.
2. Hearing of parties by the court.
3. Judgment of court delivered at the end of trial.
4. Execution of the operative part of judgment.

As it is the court which ultimately delivers the judgment it is important to note that the courts work in hierarchy the topmost being the Hon'ble Supreme court of India followed by High courts of respective states them being followed by district court and subordinate court.

The justice delivery system in India exercise various functions such as administration of justice In accordance with law, adjudication of civil and criminal cases, making decisions on constitutional questions, administrative functions, advisory functions, protection of fundamental rights in form of writ jurisdiction and most importantly the guardian of our constitution.

The most fundamental problem facing the Indian Judiciary is the high backlog of cases. This backlog in turn translates into the delay in disposing of cases. And delay in disposing cases is a very serious concern as it erodes the faith of the people in the system and when nothing is done about it can also contribute in people losing all faith in the system and instead opting to go to parallel systems like the insurgent groups.ⁱⁱⁱ

The most controversial aspect of justice delivery is the appointment of judges, and has been so for many decades. Independent India started off with independent judges who took independent decisions. Many of these decisions were not to the liking of the establishment and plans were made to bring them to heel. But the judges stood like a rock, leading to the establishment theorizing on a committed judiciary. To some extent, the establishment succeeded in making inroads into the independence of the judiciary, but the judiciary struck back and arrogated to itself the sole authority to recommend judges for appointment. This was an act of self-preservation and perhaps needed at the time.

What the judiciary forgot was the sage advice of Uncle Ben to Peter 'Spider-Man' Parker: *With great power comes great responsibility*. The occasionally unprincipled exercise of that power by the collegiums of judges in the Supreme Court in the recent past led the establishment to strike back. The battle lines are drawn and I believe that for now the judiciary is on the losing side. The controversy regarding the appointment of judges has led to criticism of the so-called 'judges appointing judges' method.^{iv}

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guidance of the e-committee of the Supreme Court. What we lack is the will to make an effort to find a long-term solution, instead of searching for quick-fix remedies that are partially effective and transitory.^v

We have to design a justice system which serves our society. It is here I would like to suggest certain structural changes:

A. Shift from a conflict resolution to justice dispensation

Indian courts are able to settle differences between the parties on the grounds of the pleadings rendered by them. The Higher Judicial, in particular the Supreme Court, has invented many tools for the administration of justice when practicing its authority. Many creative litigation strategies have been developed and may serve as a tool for judicial change. It was apparent in the establishment and expansion of the authority of the PIL. Similarly, there has to be a decentralization of justice-based judicial advocacy right down to the lowest court in the world.

B. Justice for the poor: judicial enforcement of socio-economic rights

The talk on fairness for a billion citizens would remain insufficient in regard to socio-economic interests. While the Indian Constitution endorses these privileges in the context of the "Directive Values of State Policy" in Section IV of the Constitution, it does not allow for any process for their enforcement. The overflowing dockets of the courts are not a sign of failure of the system but a sign of faith in the administration of justice. Public resort to court to suppress public mischief is a tribute to the justice-delivery system. The problem of delay in the disposal of cases, however, is a real problem. It is also a challenge.^{vi}

REMEDIES SO FAR TARGETED

Fast Track Courts

In view of the long pending cases and their size, Fast Track Courts have been developed throughout the region. The unfeasible thing, though, is that most of these Fast Track Courts have been set up with an inadequate amount of personnel and resources, thus undermining the goals that they seek to accomplish.

Legal Awareness Programmes

Numerous legal literacy campaigns have been developed and introduced. They that, of course, have modified people's minds; nevertheless, tracking these systems for the correct location, time and people is always needed.

Lok Adalats

Under the Legal Services Authority Act, numerous Lok Adalats are supposed to be situated at different rates and a reasonable number of cases have been registered. However, it has often been observed that the goals pursued have not been accomplished owing to the limited notices of making these Adalats.

In referring some of the aspects which cause people losing faith upon the Courts, people in different dimensions and Officials have their own responsibility to gear up the same. It is commonly said by the great personality that “Your action is louder than your word”. Therefore, we, the citizens need to take a pledge to discharge our own duties, own responsibilities and act practically so as to get justice rendered through justice delivery system timely and appropriately. This is the need of the hour.^{vii}

India has experienced a docket explosion and a huge backlog of pending cases over the past seventy years. More than 22 million lawsuits are presently pending in different courts around the world. The vast number of lawsuits pending has hindered the effective operation of the courts and adversely impacted citizens 'ability to seek justice in good time.

ROLE OF LAWYERS

There is no gainsaying the fact that no reform of the justice-delivery system is possible without full cooperation of lawyers and their active assistance. It is trite that the Bench and Bar are two sides of the same coin. What can be the contribution of lawyers to reform?

Firstly, there must be some reform in the education system. We need to give high priority to merit and to encourage students and fresh law graduates to actively participate in the management of law. This can be achieved by encouraging them to actually participate in the settlement of disputes through the Lok Adalat or through mediation.

Secondly, there is a paucity of research papers on various aspects of law. Students and freshly enrolled lawyers should be encouraged to study the prevailing systems, point out the flaws

therein and suggest remedies. With the wealth of talent that is available in the country, they can do wonders in research work.

Thirdly, interactive sessions should be conducted by senior lawyers who should teach young lawyers various aspects of lawyering like court craft, ethics, etc. A pilot project has been launched by the British Council which has received a tremendous response from various Bar Councils. Lawyers are taught the art of examination of witnesses, how to prepare and present a case. This programme is conducted over the weekends during which period senior lawyers spend their time with youngsters.

By spending time in improving the quality of professionals, we will be giving the justice-delivery system a great boost. The standing of lawyers in society will improve and the respect that the noble profession once had will be restored. Sometime back, *The Times of India* and Aditya Birla Group conducted an opinion poll. The results of this poll were extremely depressing. Of the 16 professions/fields that were polled, the participants rated the legal profession the least honest and advocates were said to contribute the least to upliftment of society. We need to change this mindset if our profession is to regain its respectability.

It is well known that there are no financial benefits in being a judge. For this reason, many affluent lawyers are not willing to give up a lucrative practice. I call upon well-to-do practicing lawyers to have a rethink, because it is your contribution to society and the justice-delivery system that is most needed. If the best and the brightest do not come forward, our system can never improve and we will only continue criticizing the justice-delivery system. Surely, this is not a good way to tackle the problem.^{viii}

CONCLUSION

We now know what the main problem of the Indian Judiciary is, and the main factors that contribute to it. This problem can only be resolved through measures such as the promotion of alternative dispute resolution mechanisms, ensuring that enough judges are appointed and done on time and that there is no vacancy. But, this doesn't mean to say that it's just because positions are vacant that anyone should be appointed. The quality of justice is as important as the speed of justice. India now lacks speed, but ill-implemented reforms can also distort quality, and this must be avoided at all costs.

Here is the list of some suggestions in order to maintain the efficient working of judiciary:

Providing financial autonomy to judiciary:

To have an independent Judiciary in India is not merely a fundamental right of the citizen but is part of the basic structure of the Constitution as held by the Supreme Court. Therefore, the independence of the Judiciary must have topmost priority.

In the last 50 years, there has been no proper allocation of funds commensurate with the corresponding increase in population, legal awareness, increase in legislation. There not being a periodic Five Year or an annual Plan for the Judiciary, the absence of such plans has compounded the problem. The result is that there is, in terms of international Covenants and resolutions set out in Chapter II, a clear violation of the basic structure of the Constitution and of the basic human rights resulting in an excessive overload⁴ of cases

Basically, lack of long-range planning and lack of finances have been the main causes for the storage of courts and judicial officers in all parts of the country.^{ix}

Increasing access by reducing delay:

Reasonable time is one of the most frequently invoked components of fair trial and it is likely to remain for a long time on the agenda of supervision mechanisms as parameters defining reasonable time are only gradually being developed and the process of reforming national justice systems to ensure judgments within a reasonable time is a slow one. It should be noted that a person charged with an offence must also have adequate time and facilities to prepare a defence and be given the possibilities of a proper examination of materials and witnesses. Moreover, adequate legal- and translation assistance must be provided. A trial may not be unreasonably short resulting in the parties not having time for adequate preparation and defence. Efficiency of court proceedings is without doubt one of the major challenges of national justice systems today.^x

Enhancing accountability through structure changes and setting benchmark:

Many creative litigation strategies have been developed and may serve as a tool for judicial change. It was apparent in the establishment and expansion of the authority of the PIL. Similarly, there has to be a decentralization of justice-based judicial advocacy right down to

the lowest court in the world. The talk on fairness for a billion citizens would remain insufficient in regard to socio-economic interests.

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